No. 9700

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

QUAN TOON JUNG,

Appellant,

vs.

R. P. BONHAM,
DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION AT THE PORT OF SEATTLE,

Appellee.

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

BRIEF FOR APPELLEE

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PAUL P. O'BRIEN,
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J. CHARLES DENNIS,
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J. P. SANDERSON,
Immigration and Naturalization Service.
(On the Brief)

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1012 United States Court House
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BRIEF FOR APPELLEE

STATEMENT OF THE CASE

The appellant admits that he was born in China and is a full blood Chinese person. He says that his name is Quan Toon (Tung) Jung and born on a Chinese date corresponding to May 27, 1922. He arrived from China at Seattle on July 10, 1939, and applied for admission into the United States as a citizen thereof by virtue of being a foreign born son of a native citizen of the United States named Quan

Siew. Following the usual hearing prescribed by law in such cases, in which the appellant, his alleged father and an identifying witness named Kong Tin, testified concerning the relationship claimed, his application for admission was denied by a regularly constituted Board of Special Inquiry at the United States Immigration Station, Seattle, on the ground he failed to establish his claim of being a son of his alleged father, and (2) also on the ground that he is an alien ineligible to citizenship not a member of any of the exempt classes specified in Section 13 (c) of the Immigration Act of 1924 (8 U.S.C.A. 213), from which decision he appealed to the Secretary of Labor, Washington, D. C., who dismissed the appeal and directed that the appellant be returned to China. Briefs submitted by appellant's counsel are included in the certified record of the case under the seal of the Secretary of Labor, Exhibit 56016/457. Thereafter, the appellant petitioned the District Court for a writ of habeas corpus alleging that the excluding decision was wrong. After a full hearing the petition was dismissed.

ARGUMENT

CAUSE OF EXCLUSION. The essence of the case is that when the alleged father was given full opportunity to describe all of his children in 1924

he did not include a son corresponding to the name and age claimed by appellant, born prior thereto. A witness testified that when he was last in China he visited the appellant and mother in their home at the suggestion of the alleged father, but when returning to this country in 1938 testified that he had not come in contact with a member of any family of a resident of this country. The alleged father is discredited by reason of attempting to land a contraband Chinese in this country in 1932.

For more than a quarter of a century it has been the established practice of the Immigration Service to question Chinese, when applying for a return certificate and when testifying in behalf of others, concerning their marital status and the names and ages of their children. Likewise it has been the established practice to question Chinese upon return from China as to their marital status and description of their children. In the Seattle district, it has been customary to add only the description of the children born as a result of the trip to China upon return. Chinese in general are familiar with such practice. The courts have uniformly held that when a Chinese has been given full opportunity to name and describe all of his children he is estopped from later landing in this couuntry as his child any child not so claimed.

The reason for the rule is to prevent the landing of contraband Chinese in this country.

CHILDREN OF THE ALLEGED FATHER. Exhibit 14645/8-8 shows that Quan Siew, the alleged father, returned from China on September 6, 1915, and testified during his examination for admission that he was married but had no children.

Exhibit 7030/630 shows that Quan Siew was examined at Norfolk, Va., February 18, 1921, on his application for a return certificate. He then claimed one child, a son, named Quan Sang (Soon), 6 years of age. He departed for China July 20, 1921, and returned September 7, 1924, when he claimed four sons, three born during said trip, and described as:

Quan Gun, 3, born CR 10-4-15, (May 22, 1921)
Quan Gee, 2, born CR 12-5-1, (June 14, 1923)
Quan Lai, 1, born CR 13-7-15, (August 15, 1924)

On April 13, 1926, in being examined for a return certificate, he claimed four sons, but was not questioned as to their names and ages because he previously described four sons as shown in the record. He left for China April 16, 1926, and returned June 5, 1927, when he claimed no additional children. On September 16, 1930, he testified during his examination for a return certificate that he had five sons, in-

cluding one born after he left China, described as:

> Quan Toon Soon, 15 years, born in 1915, Chinese date 11-15 (December 21, 1915),
>
> Quan Toon Heung, born 1922, Chinese month 5-1 (May 27, 1922),
>
> Quan Toon Jon, born 1923, Chinese month 6-1 (July 14, 1923).
>
> Quan Toon Ham, born 1924, Chinese month 7-15 (August 15, 1924),
>
> Quan Toon Ying, born 1927, Chinese month 7-29 (August 26, 1927).

He was then asked if he ever had sons named Quan Gun, Quan Gee and Quan Lai, and replied "No." He left for China on September 20, 1930, and returned October 18, 1932, when he claimed five sons and one daughter.

Exhibit 7030/4786 contains the record of Quan Toon Soon, the first alleged son to apply for admission, who arrived October 18, 1932, from China in company with his alleged father. The alleged father testified in the case on October 27, 1932, and described his children as:

> Quan Toon Soon, 18 years old Chinese reckoning, born 11th month, 15th day,
>
> Quan Toon Jung, 11, born CR 10 or 11, 5th month, 1st day (June 6, 1921, or May 27 or June 25, 1922),

Toon Hem, 10, born 6th month, 1st day, year unknown,

Toon Heung, 9, born 7th month, 15th day, year unknown,

Tung Ying, 7, born 7th month, 29th day, year unknown,

Tung Yip, 1, born CR 20-6-13 (July 27, 1931).

Thus, it is shown that the alleged father's testimony of 1930 and 1932 concerning the names and ages of his second, third and fourth sons is absolutely different from what he testified to in 1924. Also, Quan Toon Heung was the second son in 1930 but was the fourth son in 1932. Quan Toon Hem was the fourth son in 1930 but was the third son in 1932. If Quan Toon Jon and Quan Toon Jung could be considered as the same name, which is conceded, he was the third son in 1930 and born July 14, 1923, and the second son in 1932 and born June 6, 1921. The alleged father's testimony of 1930 and 1932 is in agreement as to the name and date of birth of the fifth son, Quan Toon Ying. The record shows that the number of children claimed was recorded at each time the alleged father appeared before the immigration authorities.

The aforementioned discrepancies were the principal cause for the exclusion of Quan Toon Soon, the

first alleged son, in 1932. In that case writ of habeas corpus proceedings were instituted by petitioner's present counsel and dismissed by Judge Neterer, District Court No. 20746.

STATUS OF THE APPELLANT. The appellant says that his name is Quan Tung (Toon) Jung and never known by any other name; that he is the second son of his father, and was born CR 11, the first 5th month, 1st day (May 27, 1922), P. 7, 29 of the certified record, Exhibit 56016/457, and is corroborated by his alleged father (P. 17, 19).

It is shown that the alleged father returned from China on September 7, 1924, and then claimed as his second son Quan Gun, born CR 10-4-15 (May 22, 1921), and then did not claim to have a son corresponding to the name and age given by the appellant.

It is submitted that if the alleged father has any sons he should at least know their names and the order in which they were born. It is generally recognized that it is much easier to remember the truth than a falsity. It is very probable in view of the circumstances shown that the alleged father did not have a second , third or fourth son when he returned from China in 1924, and that he then simply laid the foundation to later bring to this country three boys by

giving the names of Quan Gun, Quan Gee and Quan Lai, and could not remember the names when he made the arrangements to bring the appellant to this country.

A Chinese bringing an alleged son to this country is discredited by giving testimony contrary to his previous testimony concerning the number of his children, their order of birth, their names and dates of birth, as is shown in many excluded cases, including the following:

Louie Tin v. Nagle, 9 Cir., 24 Fed (2) 964,
Wong Som Yin v. Nagle, 9 Cir., 37 Fed (2) 893,
Lee Get Nuey v. Nagle, 9 Cir., 53 Fed (2) 209,
Wong Wing Sin v. Nagle, 9 Cir., 54 Fed (2) 321,
Weedin v. Chin Guie, 9 Cir., 62 Fed (2) 351,
Yee Soo Hing v. Proctor, 9 Cir., 86 Fed (2) 397,
Chin Ming Hee v. Proctor, 9 Cir., 97 Fed (2) 901,
Won Ying Loon v. Carr, 9 Cir., 108 Fed (2) 91,

In the Wong Wing Sin case the order of birth of last two alleged sons was reversed. The Yee Soo Hing case also shows that the order of birth of alleged sons was reversed, and it would seem that that case alone is sufficient authority for holding that the excluding order should be affirmed. In the Won Ying Loon case the court said with reference to the witnesses:

> "Whether, in testifying as they did, appellant and Won Doo Mo were deliberately lying or were

> stating what they honestly believed to be true is, for present purposes, immaterial. Whatever their intentions or beliefs may have been, their testimony was partly, if not wholly, false. Knowing this, and not knowing which part, if any, of their testimony was true, the board was warranted in rejecting it all and holding that appellant's claim that he was Won Ying Loon had not been established."

TESTIMONY OF KONG TIN. Kong Tin was presented as an identifying witness. He testified in the case December 8, 1939 (P. 39-45) and said that prior to making his last trip to China he had conversation with the appellant's father concerning the father's family and possibility of visiting the said family during his proposed trip to China, and that during the latter part of 1937 did visit the father's family and saw four or five children and talked to the appellant and his mother.

Exhibit 7032/1049 relates to Kong Tin and shows that he departed for China on April 24, 1937, and returned February 12, 1938, when he was asked during his brief examination for admission:

> "Did you visit any resident of U. S. who happened to be at his home in China during your recent stay, or did you visit the home of any such resident? A. No.
>
> Were you introduced to the son, wife, or daughter of any resident of this country, while in China? A. No."

From the testimony of this witness at the time of his return in 1938, he knew nothing about the alleged visit to the appellant's home, and it is evident that his testimony must have been prepared and arranged for to meet the present emergency. Indeed, he could properly be classified as a "pinch hitter." In *Wong Soo v. Nagle*, 60 Fed (2) P. 682, with reference to such a witness this Court said:

> "The facts adverted were sufficient to authorize the board of inquiry to reject the witnesses' testimony as untrue and as having been procured for the purpose of furthering the applicant's case."

In the case of *Mui Sam Hun v. United States*, 9, Cir., 78 Fed (2) 614, two identifying witnesses were presented. The circumstances were somewhat similar. Their testimony was rejected.

THE ALLEGED FATHER IS A DISCREDITED WITNESS. The alleged father of the appellant is completely discredited due to serious discrepancies between his testimony of various years concerning his alleged children, and especially due to the fact that he attempted to land in this country a contraband Chinese as his son who gave the name of Quan Toon Soon in 1932 (Exhibit 7030/4786). The decision in the case of *Quan Wing Seung v. Nagle*, 9 Cir., 41 Fed

(2) 58, consists of but 17 lines, the controlling part reading:

> "The record is replete with alleged discrepancies, but in view of the false testimony given by the father in an effort to secure the admission of an alleged son, we can not say that a fair hearing was denied because the immigration authorities did not believe his testimony in the present instant."

If the testimony of the alleged father and identifying witness is rejected, as it has been, the appellant is left with no evidence to support his claim of relationship. *Wong Ying Wing v. Proctor*, 9 Cir., 77 Fed (2) P. 136; *Weedin v. Ng Bing Fong*, 9 Cir., 24 Fed (2) 821.

TESTIMONY OF WITNESSES: The testimony of the appellant and his two witnesses in the instant case is in good agreement. Chinese in general are familiar with the rules and practice in bringing children to this country, and the alleged father is no exception. It could not be expected that a contraband Chinese would be brought to this country without a course in coaching. However, it has been held that close or a multitude of agreement does not necessarily prove relationship.

> *Nagle v. Quon Ming Him*, 9 Cir., 42 Fed (2) 450, *Weedin v. Yee Wing Soon*, 9 Cir., 48 Fed (2) 36, *Haff v. Der Yam Min*, 9 Cir., 68 Fed (2) P. 627,

Wong Shong Been v. Proctor, 9 Cir., 79 Fed (2) 881, certiorari denied 298 US 746.

In the last case there was no discrepancy between the witnesses, but there was a discrepancy between the alleged father's prior and later testimony concerning the number of wives.

DECISION OF THE BOARD OF SPECIAL INQUIRY BASED ON PREJUDICE AND UNFAIRNESS. Counsel for the appellant devote several pages (1-11) to an attempt by innuendo and possibilities to show that the decision of the Board of Special Inquiry is based on prejudice, bias and unfairness because the chairman of the Board stated in his summary that the native born status of the alleged father was established by fraud and misrepresentation, (2) because of the exclusion of the appellant's older brother, and (3) because of inconsistent statements of the father.

It is true the chairman of the Board did say in his summary that the native status of the alleged father was established by fraud and misrepresentation and gave his reasons therefor. The chairman based his theory on the contents of Exhibit 14, 645/8-8, which indicates that the alleged father is not a native of this country, and whether the adverse evidence was later cured is merely a matter of opinion.

It will be noted in the same paragraph (P. 31) that the chairman of the Board did concede the alleged father to be a native born citizen of the United States. In *Jung Yen Loy v. Cahill*, 9 Cir., 81 Fed (2) P. 811, the Chinese was by the Immigration authorities held to be a citizen of this country eight times. In *Ex parte Mock Kee Song*, 19 Fed Supp. 743, affirmed in *Mock Kee Song v. Cahill*, 9 Cir., 94 Fed (2) 975, the Chinese was conceded to have been a native born citizen of this country by the Immigration authorities seventeen times. The Court held both were aliens.

The chairman properly took into consideration the creditability of the alleged father who previously conspired to defeat the Chinese Exclusion laws by attempting to land in this country as his son a Chinese named Quan Toon Soon in 1932, Exhibit 7030/-4786. *Quan Wing Seung v. Nagle*, 9 Cir., 41 Fed (2) 58.

It was the duty of the chairman of the Board to take into consideration the discrepancies shown in the testimony of the alleged father of various dates concerning the names and ages of his alleged children.

FOUNDATION. The appellant (P. 22) cites *United States ex rel. Lee Kim Toy v. Day*, 45 Fed (2) 206, N.Y., District Judge Patterson:

> "It would be pushing beyond the bounds of reason to suppose that Lee Kim (the father) in 1915 concocted a story of a fictitious son to be used 15 years or more later."

Such reasoning is certainly not sound.

In the case of *Ng Lin Suey v. Day*, 49 Fed (2) 471, N.Y., District Judge Woolsey, after a three year visit the alleged father returned from China in 1927 and claimed two sons born on said trip named Wah See and Chee Han. The applicant and an alleged prior landed brother testified they knew nothing of their father having such sons, although the applicant did claim he had two younger brothers, of different names and one of them was born after his father left his home in China and came to the United States. The Court dismissed the writ and said:

> "This evidence leaves the alleged citizen father in the position of having made a false report on his return in April, 1927 — a curious circumstance which is due doubtless to a desire to lay the foundation for future admissions of other sons, and which throws justifiable doubt on this whole situation."

The same question was considered in *Ng Kee Wong v. Corsi*, 2 Cir., 65 Fed (2) P. 565, -933:

> "if false, the statement can be explained only by the supposition that in 1923 the father had already formed a fraudulent plan to bring in the present applicant."

The appellant states (P. 23):

> "Chinese do not conceal sons or claim fewer sons than they have, and there surely would be no reason in this case why complete information should not be given if it was clearly and definitely asked."

The alleged father claims a total of six children and that the first five are sons. It is submitted that of all the records considered by the courts with reference to American citizen Chinese fathers and their children born in China, the great majority, or at least 90%, will show that the first five children claimed are sons. See *Ex parte Jew You On*, 16 Fed (2) 153, Judge Bourquin; *Ex parte Wong Tung Dung*, 20 Fed (2) 149, Judge Neterer.

LANDING RECORD. Counsel for the appellant attack the landing record of the alleged father of September 7, 1924, from every conceivable angle (P. 13-22, 24-26), and say that it was prepared in haste without care, written in pencil, in part illegible. The record speaks for itself. It is written in indelible pencil. Counsel do not claim to have more than ordinary ability in reading handwriting, yet do not deny being able to read the entire record. They have failed to show that any part of the answers was not faithfully and properly recorded. It is quite evident that the alleged father was not prepared to state the names

and dates of birth of his alleged children and stumbled when answering. It is reasonable to presume that the examining officials spent considerable time in questioning him and were not satisfied as to the truth of his answers, and consequently noted that the existence of the three sons was questionable and that it was difficult for the alleged father to give dates of birth of the children. If the alleged father was unable to correctly answer the questions that was his misfortune *Kaoru Yamataya v. Fisher*, 189 U.S. 86, 23 Sup. Ct. P. 615.

The general attitude of counsel for appellant is summed up in their conclusion (P. 22) in face of the connivance and conspiracy of the alleged father when he exhausted his efforts in attempting to land the previously mentioned pseudo Chinese in this country in 1932:

> "The conclusion of the Board of Special Inquiry can stand on no other hypothesis except that a deliberate fraud was concocted in 1924 by putting in names in anticipation of bringing not one but several fictitious sons into the United States. This involves not only an assumption of gross IMMORALITY and FRAUD, but of a clever thought out plan for future action which is not warranted either by the evidence of Quan Siew's character nor of his INTELLIGENCE." (Caps supplied).

"*Where law ends, Tyranny begins.*"—Wm. Pitt.

FINDINGS AND CONCLUSIONS OF SECRETARY OF LABOR

The findings and conclusions of the local Board of Special Inquiry are shown on pages 30-32 and 50, 51 of the certified record. Exhibit 56016/457. The findings and conclusions of the Board of Review, approved by the Secretary of Labor are shown on the blue sheets in the same record and are quoted in the appendix.

The legal authorities applicable to this case are stated in *Woon Sun Seung v. Proctor*, 9 Cir., 99 Fed (2) 285.

The District Court did not commit error in denying the write of habeas corpus and its decision should be affirmed.

Respectfully submitted,

J. CHARLES DENNIS,
United States Attorney,

GERALD SHUCKLIN,
Assistant United States Attorney,
Attorneys for Appellee.

J. P. SANDERSON,
Immigration and Naturalization Service. (On the Brief).

APPENDIX

"56016/457 November 6, 1939.

SEATTLE

In re: Quan Toon Jung, aged 17

Before the Board of Review on APPEAL in EXCLUSION proceedings.

In behalf of APPELLANT: Attorney A. W. Richter, Milwaukee, Wisconsin, heard on September 21, 1939, at which time he also filed a brief.

BOARD: Finucane, Savoretti, Charles, Ebey and Ward.

GROUNDS for exclusion: That the relationship claimed by the applicant to his alleged father has not reasonably been established and that he is an alien ineligible to citizenship and coming to the United States in violation of Section 13 (c) of the Immigration Act of 1924.

MOTION: That the appeal be sustained and the applicant admitted as a citizen, being a son of a native-born citizen of the United States.

Quan Siew, alleged father of the applicant, who was last in China between September, 1930, and October, 1932, has appeared as the only witness to testify on applicant's behalf.

The record shows that the alleged father of the applicant claimed in February, 1921, to have one son, for whom he gave the name of Quan Sang and stated his age to be six. When returning from the trip to China on which he departed shortly after recording that claim the alleged father was recorded on a form

statement dated September 7, 1924, as stating that he had four sons, evidently meaning that in addition to the one son he had previously claimed three sons had been born while he was in China on the trip from which he was then returning. The names and birth dates of these three sons he gave as follows:

> Quan Gun, born May 22, 1921, Quan Gee, born June 14, 1923 and Quan Lai, born August 15, 1924.

This appellant, QUAN TOON JUNG, is now claimed to have been born on May 27, 1922. In that September, 1924, statement there appears no claim by the alleged father to have had a son of the name or of a name closely similar to that given by and for this applicant and no son born on the birth date now given by and for this applicant. In September, 1930, when an applicant for a return certificate at Seattle, the alleged father gave the names and birth dates of his four claimed sons as Quan Toon Soon, born December 21, 1915; Quan Toon Heung, born May 27, 1922; Quan Toon Jon, born July 14, 1923; and Quan Toon Ham, born August 15, 1924.

In November, 1932, Quan Toon Soon, the older alleged brother of this present applicant, applied for admission as a son of Quan Siew, the applicant's alleged father. At that time the names and birth dates of the alleged father's four claimed sons by his first wife were given as Quan Toon Son, born December 21, 1915; Quan Toon Jung, born June 25, 1922; Quan Toon Heng born June 14, 1923; and Quan Toon Heung, born June 15, 1924. The applicant Quan Toon Soon was excluded by a vote of the Board of Special Inquiry at Seattle and when his case came before the Department on appeal the appeal was dismissed (55813/733) principally upon the finding that 'It is not to be believed that a father testifying

truthfully regarding his children would so contradict himself at various times as to their names, ages and order of birth, and this feature would seem to discredit him as a witness regarding any claim of family relationship that he might make'. Following the dismissal of that appeal a petition for a writ of habeas corpus was sued out in the District Court of the United States for the Western District of Washington, Northern Division, and while no opinion appears to have been spoken by the court, its action apparently indicated that the order denying that applicant's admission was not arbitrary or capricious and that there had been no unfairness in the hearing. He was, therefore, returned to China in April, 1933.

While the present testimony is free from discrepancies and is thus corroborative of the applicant's claim, in the opinion of the Board of Review no evidence has been presented which is sufficiently strong or persuasive of the bona fides of the case to overcome the very serious adverse evidence in the inconsistent and conflicting prior-record statements which this applicant's alleged father has made in the description of his claimed family and which were thus found to constitute a sufficient reason for the adverse finding in the case of applicant's alleged older brother who applied for admission in 1932 and was returned to China in 1933.

It is unfortunately necessary to comment upon the statements contained in the 'summary by chairman on rejection', in this case which appear to have afforded to the attorney some occasion for his charging an attitude of unfairness and prejudice. It appears to be a fact that although the Board of Special Inquiry conceded the citizenship of this applicant's alleged father so that the only question at issue in the case was the relationship of the applicant to him, yet in the 'summary' there appears the statement 'The

native born status of applicant's alleged father, QUAN SIEW, was established by fraud and misrepresentation', and as to the character of the testimony the statement is made in this 'summary' that 'Applicant is well coached on testimony regarding his alleged father's family and the home village'. There appears to have been no warrant or justification whatever for the setting down of these statements in this 'summary'. However, it is to be noted that this 'summary' formed no part whatever of the hearing and, indeed, was written apparently after the action by the Board of Special Inquiry had been taken and was written, as its title indicates, as the summary not by the Board of Special Inquiry, the lawfully constituted body authorized to conduct the hearing, but as the 'summary' by the chairman acting as an individual after the official action of the Board of Special Inquiry had been concluded. A review of the hearing itself gives no ground whatever for a charge of unfairness and in the circumstances it is not believed that these unfortunate statements made by the person who had officiated as the chairman of the Board of Special Inquiry after the conclusion of the hearing can properly be taken as grounding a charge of unfairness in the hearing.

In view of the adverse evidence in the contradictory prior-record statements of this applicant's alleged father, it is not believed that the applicant's claim to be his son has satisfactorily or reasonably been established.

It is recommended that the appeal be DISMISSED.

(Sgd.) L. PAUL WININGS, *Chairman.*

So Ordered:
C. V. McLAUGHLIN,
The Assistant Secretary of Labor."

"56016/457 February 10, 1940.

SEATTLE

In re: Quan Toon Jung, aged 17

Before the Board of Review on APPEAL in EXCLUSION proceedings.

BOARD: Savoretti, Ebey and Ward.

In behalf of APPELLANT: Attorney A. W. Richter, Milwaukee, Wisconsin, heard on January 5, 1940, at which time he also filed a supplementary brief. Senator Robert M. La Follette has expressed interest.

The record shows that for the reasons stated in memorandum of November 6, 1939, the appeal of this applicant from denial of admission at Seattle was dismissed, and that on November 16th a stay of deportation was directed and authorization given for the reopening of the case to hear a proposed additional witness.

In his appearance before the Board of Review and in his supplementary brief; submitted since the case was reopened and, after hearing the proposed additional witness, the Board of Special Inquiry at Seattle again voted to exclude the applicant; the attorney has devoted the first and principal part of his argument to an attack upon the previous action of the Department in dismissing the appeal from the original excluding decision by the Board of Special Inquiry.

It is not believed that the attorney has set forth any substantial reason to support his contention that the previous action of the Department was erroneous in its finding that the alleged father's failure in 1924,

upon return from his visit to China, in the midst of which this applicant is now claimed to have been born, to claim a son of name and birth date corresponding with those now given by and for this applicant, constitutes very seriously, if not indeed fatally, adverse evidence. The attorney has, however, called attention to a statement in the Board of Review memorandum of November 6, 1939, in which two comparatively minor and immaterial mistakes were inadvertently made with reference to the testimony given by this applicant's alleged father in November, 1932. This memorandum statement is that the name and birth date of his alleged second son, who this applicant claims to be, were given as "Quan Toon June, born June 25, 1922." The attorney is warranted in saying that the transcription of the testimony given by the alleged father in November, 1932, 'shows no name "June", but gives the name of the second son, Quan Toon Jung', and it is to be regretted that this typographical error passed unnoticed.

As to the apparent difference in birth date between June 25, 1922, as set down in that memorandum statement, and May 27, 1922; the exact fact is that the alleged father spoke of his claimed second son as 'Quan Toon Jung, 11 years old, born C.R. 10 or 11, 5th month, first day' and in answer to the question 'Was he born in C.R. 10 or C.R. 11?' this alleged father stated 'I do not know, he is 11 years old.' As Chinese calculate ages, that statement 'he is 11 years old' would indicate that it was C.R. 11, or 1922, that the son in question was claimed to have been born and 'C.R. 11, 5th month, first day' could be either May 27 or June 25, 1922, since there were two fifth months in that year. Again, it may be said that it is to be regretted that in giving the Western calendar interpretation of the Chinese date as given by the alleged father the two alternative dates were not both set down in this previous memorandum statement.

While the Board of Review unhesitatingly admits these unfortunate mistakes, a reference to the previous memorandum cannot fail to show that the inadvertent making of these mistakes had no determining importance or materiality in the substance of the Board of Review finding or in the action of the Department based thereon.

With the contention of the attorney that the original hearing of the applicant was rendered unfair because of certain statements contained in the 'summary by chairmen on rejection,' which was written after the Board of Special Inquiry hearing had been closed and that Board's decision officially rendered, the Board of Review does not agree.

As to the new evidence presented since the case was reopened: This consists in testimony received on December 8, 1939, from one Kong Tin, an alleged acquaintance of the applicant's alleged father, who was last in China between April, 1937, and February, 1938. He has testified that prior to his departure for China in 1937 this applicant's alleged father gave him the address of his family in China and asked him, if convenient, to visit his family, and that in or about October, 1937, he did visit this alleged father's home and there had this applicant introduced to him by this alleged father's wife. On his return on February 12, 1938, however, this Kong Tin, having been sworn as to the truth of his statements, answered in the affirmative the question whether he understood that the statements he made in reply to the questions following would be used if he should testify before the Service in the future and answered in the negative the questions 'Did you visit any resident of the United States who happened to be at his home in China during your recent stay, or did you visit the home of any such resident?' and 'Were you introduced to the son, wife, or daughter of any resident of this country,

while in China?'. Certainly, it would not seem reasonable to accept testimony given in corroboration of this applicant's claim which rests wholly on the present assertion that this witness visited the alleged father's home in China and was introduced to this applicant in view of that record contradiction of the truth of this present assertion.

It is not believed that any evidence has been presented since the case was reopened which warrants a change in the outstanding decision.

It is, therefore, recommended that the order dismissing the appeal stand.

(Sgd.) RALPH T. SEWARD,
Board of Review,

So Ordered:
TURNER W. BATTLE."